

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION AT MEMPHIS

FREE SPEECH COALITION, INC.,	)	
DEEP CONNECTION TECHNOLOGIES, INC.,	)	
JFF PUBLICATIONS, LLC,	)	
PHE, INC., and MELROSE MICHAELS,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:24-cv-02933
	)	Chief Judge Lipman
JONATHAN SKRMETTI, in his official capacity as	)	Magistrate Judge Pham
THE ATTORNEY GENERAL OF TENNESSEE,	)	
	)	
Defendant.	)	

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DEFENDANT’S STATUS UPDATE REGARDING THE SUPREME COURT’S  
DECISION IN *FREE SPEECH COALITION, INC. V. PAXTON*

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Defendant Jonathan Skrmetti, Attorney General for the State of Tennessee, provides a status update regarding the Supreme Court’s decision in *Free Speech Coalition, Inc. v. Paxton*, No. 23-1122, 2025 WL 1773625 (2025), pursuant to this Court’s April 22, 2025 Order staying this matter pending the Supreme Court’s decision, (D.E. 55, PageID# 984).

*Paxton* involved the same organizational plaintiff, Free Speech Coalition, raising the same challenge brought here. Texas enacted a law, H.B. 1181, that requires “use of reasonable age verification methods” when “more than one-third” of a website’s content is “sexual material harmful to minors.” *Paxton*, 2025 WL 1773625 at \*3 (citing Tex. Civ. Prac. & Rem. Code Ann. § 129B.002(a)). H.B. 1181 defines “sexual material harmful to minors” as material that: (1) “is designed to appeal to or pander to the prurient interest” when taken “as a whole and with respect to minors”; (2) describes, displays, or depicts “in a manner patently offensive with respect to minors” various sex acts and portions of the human anatomy, including depictions of “sexual

intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, [and] excretory functions”; and (3) “lacks serious literary, artistic, political, or scientific value for minors.” *Id.* (citing Tex. Civ. Prac. & Rem. Code Ann. § 129B.001(6)). That restriction is “materially similar” to Tennessee’s law, as the Supreme Court explicitly acknowledged. *Id.* at \*4 n.2.

Tennessee’s law, the Protect Tennessee Minors Act (“PTMA”), also requires use of a “reasonable age-verification method” when more than “thirty-three and one-third percent (33 1/3%) or more” of a website’s content is “content harmful to minors.” Tenn. Code Ann. § 39-17-912(b)(13), (c)(1)-(2). And after recent legislation, the PTMA defines “harmful to minors” as content that: (1) “appeal[s] predominantly to the prurient, shameful or morbid interests of minors,” (2) “is patently offensive ... with respect to what is suitable for minors,” **and** (3) “[t]aken as whole lacks serious literary, artistic, political or scientific values for minors.” Tenn. Code Ann. § 39-17-901(6); (*see* Notice, D.E. 56, PageID# 985-87).

*Paxton* made clear that these laws do not violate the First Amendment. In *Paxton*, the Supreme Court determined Texas’s H.B. 1181 neither “regulate[s] the content of protected speech” on “its face” nor “in its justification.” 2025 WL 1773625, at \*11 (citation omitted). Instead, “[o]n its face” it “regulates only speech that is obscene to minors” and “its apparent purpose is simply to prevent *minors*” from “access[ing] speech that is obscene to them.” *Id.* Because laws like H.B. 1181 only impose a “burden” on adults “incidental to the statute’s regulation of activity that is not protected by the First Amendment,” the “appropriate standard” of scrutiny for these laws is “intermediate scrutiny.” *Id.*

The Court then held that age-restrictions on content harmful to minors “readily satisf[y]” intermediate scrutiny. *Id.* at \*17. These laws “undoubtedly advance[] [the] important governmental interest” in “shielding children from sexual content.” *Id.* And “requiring age

verification online is plainly a legitimate legislative choice” to further that interest, which makes these laws “sufficiently tailored.” *Id.* The Court held that Texas’s adaption of commonly used in-person age-verification requirements to the digital age was “plainly legitimate” and “well within the State’s discretion under intermediate scrutiny.” *Id.*

That reasoning ends this case. Like the Texas law, Tennessee’s PTMA “readily survives” intermediate scrutiny because it shields children from sexual content and adapts in-person age-verification requirements to the digital age. And the Court made that explicit. “The power to require age verification is within a State’s authority to prevent children from accessing sexually explicit content.” *Id.* at \*3. The Court specifically characterized the PTMA as “*materially similar*” to Texas’s law. *Id.* at \*4 n.2. Plus, Tennessee amended the PTMA to align with the Texas law. (See Notice, D.E. 56, PageID# 985-87). The bottom line: Texas’s win in *Paxton* should spell victory for Tennessee in this case. *See id.* at \*17.

In the appeal of this Court’s preliminary injunction, Defendant is preparing a motion requesting that the Sixth Circuit vacate this Court’s preliminary injunction and remand the case for further proceedings in accordance with the Supreme Court’s decision in *Paxton*. After remand, this Court should grant Defendant’s pending motion to dismiss, (D.E. 35, PageID# 805-06). But if the Court determines that additional briefing is necessary, Defendant requests that discovery and other matters remain stayed until the motion to dismiss is resolved.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

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